

**§ 30.801 What special definitions does OWCP use in connection with Part E wage-loss determinations?**

For the purposes of paying compensation based on wage-loss under Part E of the Act, OWCP will apply the following definitions:

(a) *Average annual wage* means four times the average quarterly wages of a covered Part E employee for the 12 quarters preceding the quarter during which he or she first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility, excluding any quarters during which the employee was unemployed. Because being "retired" is not equivalent to being "unemployed," quarters during which an employee had no wages because he or she was retired will not be excluded from this calculation.

(b) *Normal retirement age* means the age at which a covered Part E employee first became eligible for unreduced retirement benefits under the Old-Age, Survivors and Disability Insurance (OASDI) provisions of the Social Security Act. In general, persons born during or before 1937 are eligible for unreduced OASDI retirement benefits at age 65, and that age increases in monthly increments until it reaches 67, which is the age at which persons born during or after 1960 become eligible for unreduced OASDI retirement benefits.

(c) *Quarter* means the three-month period January through March, April through June, July through September, or October through December.

(d) *Quarter during which the employee was unemployed* means any quarter during which the covered Part E employee had \$700 (in constant 2005 dollars) or less in wages unless the quarter is one during which the employee was retired.

(e) *Year of wage-loss* means a calendar year during which the covered Part E employee's earnings were less than his or her average annual wage, after such earnings have been adjusted using the Consumer Price Index for All Urban Consumers (CPI-U), as produced by the Bureau of Labor Statistics, to reflect their value in the year during which the employee first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility.

EVIDENCE OF WAGE-LOSS

**§ 30.805 What evidence does OWCP use to determine a covered Part E employee's average annual wage and whether he or she experienced compensable wage-loss under Part E of EEOICPA?**

(a) OWCP may rely on quarterly wages information reported to the Social Security Administration to establish a covered Part E employee's presumed average annual wage (see § 30.810) and the duration and extent of any years of wage-loss that are compensable under Part E of the Act (see § 30.811). OWCP may also rely on other probative evidence of a covered Part E employee's wages, and may ask the claimant for additional evidence necessary to make this determination, if necessary.

(b) OWCP also requires the submission of rationalized medical evidence of sufficient probative value to establish that the period of wage-loss at issue is causally related to the covered Part E employee's covered illness.

**§ 30.806 May a claimant submit factual evidence in support of a different determination of average annual wage and/or wage-loss than that found by OWCP?**

A claimant who disagrees with the evidence OWCP has obtained under § 30.805(a) and alleges a different average annual wage for the covered Part E employee, or that there was a greater duration or extent of wage-loss, may submit records that were produced in the ordinary course of business due to the employee's employment to rebut that evidence, to the extent that such records are determined to be authentic by OWCP by a preponderance of the evidence. The average annual wage and/or wage-loss of the covered Part E employee will then be determined by OWCP in the exercise of its discretion.

DETERMINATIONS OF AVERAGE ANNUAL WAGE AND PERCENTAGES OF LOSS

**§ 30.810 How will OWCP calculate the average annual wage of a covered Part E employee?**

To calculate the average annual wage of a covered Part E employee as defined in § 30.801(a), OWCP will: